

Handling Negotiations Part I: Preparing Negotiations When You're the Junior Lawyer on the Matter

By Danny Newman and Todd Schwartz

This is the first article in a four-part series detailing several points which relate almost exclusively to younger lawyers. These articles offer lessons not taught in the classroom that are vital to successful negotiations for clients and career management.

You are handling your first negotiation—congratulations! Now that the ball is in your court, your first step is to set up your client, and yourself, with a strategy to achieve the best possible outcome.

Prepare, Prepare, Prepare

First and most important is to get yourself up to speed on the negotiation topic, the matter, and the client. Because your client trusts you to handle a live negotiation, you need to be an expert on that negotiation and the entire project. Research as much as you can. Develop your specific strategy for the situation. Create a cheat sheet, or pre-negotiation analysis (PNA), for yourself. This should include key details, such as:

- opening offer,
- reservation (or walk-away) point,
- your client's interests,
- the opposing side's interests,
- your best alternative to a negotiated agreement (BATNA),
- answers to anticipated tough questions,
- questions that will give you the answers you need to understand the other side's interests and alternatives, and
- the meeting agenda.

Go over this PNA with your senior attorneys and, if possible, the client. Make sure you're all on the same page. They'll be more understanding of a potentially less favorable outcome knowing that you had properly prepared and vetted your analytics in advance of the negotiation.

Use the PNA during the negotiation. Preparation, which breeds confidence and expertise, is more than half the battle when negotiating as an associate. If you're unprepared, opposing counsel will know it and look to take advantage of the young, green lawyer across from them.

Determine Your Negotiating Approach and Style

Analyze different negotiating styles prior to each negotiation and determine which will work best for you. Be yourself but understand that there can be better versions of yourself. We always stress to our students or mentees the mantra, "be soft on people, but hard on issues." This means being polite, nice, cordial, and warm with opposing counsel, their staff, and the opposing party. Make small talk. Ask them about their families and what they like to do. Be forceful on the issues your client cares about but maintain a nice and warm demeanor with the other side, even when you're telling them no. There are rare times when a different style, like using harsh language or tones, might be appropriate, but those occasions are few and far between.

Discuss Your Approach and Style with More Senior Attorneys

They may have a different style, which they'll have developed over years of practice, often without much thought or formal training. Therefore, they may not agree with your style or approach. They may want to make lowball offers or play long waiting games. They may expect you to raise your voice or call the other side names. If that's the case, explain to the more senior lawyer who has entrusted you with the negotiation how you plan to approach it differently. Be mindful to explain why you think your style and approach will be successful. This warning can help avoid blame or second-guessing later if and when the negotiation doesn't go as smoothly as planned. It will also give your boss comfort that you are properly preparing for and thinking through the issues rather than winging it.

Get Authority on Maximum Settlement Amount and Devise a Strategy to Exceed It

The client authorizes a maximum or minimum they are willing to accept. Make sure you are clear about that position before entering the negotiation. If you feel the position is too low, communicate your thoughts to see if you can get more room to bargain. Once you're clear on the extent of your authority, develop a step-by-step strategy for a realistic path to exceed the client's expectations. Plan offers, consider concessions, and develop creative ideas to improve the deal for your client's interests.

Get Authority on Opening and Intervening Offers from a Senior Lawyer

Once you have authority from the client, discuss the strategy for the opening offer and how you might counter with the more senior lawyer. If the negotiation or offers will come via email, always plan to run your next offer by the more senior lawyer. If it's happening fast and on the fly, use that review point as an excuse to take a break, even if you don't think there is time for a break, or opposing counsel is pressuring you to continue. There is always time to take a break before making important decisions. It will help you collect your thoughts, and a partner cannot criticize you later for an offer they sign off on.

Now that you're prepared with a strategy, approach, and approved parameters, [we'll share tips on managing the negotiation process in the next part of this series](#).

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